

California Commission on Health and Safety and Workers' Compensation

MINUTES OF MEETING

Thursday, April 13, 2000

San Francisco, California

In Attendance

Chair Tom Rankin

Commissioners Jill A. Dulich, Gerald O'Hara, Kristen Schwenkmeyer,

Robert B. Steinberg, Darrel "Shorty" Thacker, John C. Wilson

Executive Officer Christine Baker

Absent

Commissioner Leonard C. McLeod

Call to Order/Adoption of Minutes

Chairperson Tom Rankin called the meeting to order at 10 am and asked for a motion on the minutes of the December 16, 1999 CHSWC meeting. Commissioner Wilson moved that the draft minutes be approved, Commissioner O'Hara seconded, and the motion passed unanimously.

Discussion of the Report on Workers Compensation and the California Economy

Christine Baker, CHSWC Executive Officer

Frank Neuhauser, Survey Research Center, UC Berkeley

At its December 16, 1999 meeting, the Commission members voted to engage in a study of workers' compensation benefits costs in relation to various economic indicators, such as total payroll, personal income and the Gross California Product. A draft report entitled "Workers Compensation and the California Economy" was developed by staff and submitted to the Commission members for their consideration.

Frank Neuhauser gave a brief presentation summarizing the main findings of the draft report. The analysis found that workers' compensation benefits have not kept up with inflation. The value of the permanent disability benefit after adjustment for inflation has declined to about 80 percent of its value in 1984. A recommendation was put forward that consideration should be given to indexing benefits. The report also showed that the ratio of workers' compensation costs to total payroll (and to the Gross State Product and to Personal Income) has dropped significantly during the 1990s. Proposed increases to benefits do not seem to significantly impact the ratio of benefits to total payroll (and to the GSP and PI), but such increases could affect certain sectors more than they might others. Finally, Mr. Neuhauser noted that California's industrial injury and

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illness rates have declined significantly in all industries and sectors between 1988 in 1998 even though California economy was growing. The improvement has been ascribed to a number of factors including shifts in the work force and greater emphasis on the work-place safety.

Commissioner Steinberg asked if any others states index benefits. Mr. Neuhauser said that he would find out the answer.

CHSWC Vote

Commissioner Steinberg moved that the draft report "Workers' Compensation and the California Economy" be approved. Commissioner Wilson seconded, and the motion passed unanimously.

Update on the CHSWC Study of Permanent Disability by Rand

Robert T. Reville, Ph.D., Economist, Rand

Robert Reville of Rand presented findings from the latest phase of the CHSWC permanent disability study, concerning uncompensated wage losses of permanently disabled workers at self-insured private employers in California.

In early 1998, the initial phase of the Permanent Disability study assessed the earnings losses sustained by permanently disabled workers of insured firms, the only data available at that time. When the initial study findings were released, there were some concerns from the community about generalizing those results to permanently disabled workers of self-insured firms. The current phase of the study was conducted to address these concerns.

Mr. Reville gave an overview of the study entitled "Earnings Losses from Permanent Disability at Self-Insured Private Employers in California." The study found that there were significant and sustained earnings losses at self-insured firms. However, proportional earnings losses were higher for disabled workers at insured firms compared to those at self-insured employers. The insured firms had more problems with returning injured workers to work and retaining them on the job after they came back to work. Also, the lowest wage replacement rates were for the claims with the lowest PD rating, at both insured and self-insured firms.

Comments on the draft report are being received from members of the community and the report is expected to be finalized by June.

Evaluating the DWC Judicial Function

Dick Gannon, Administrative Director of DWC

Ernie Friesen, former Dean of the National Judicial College

At its last meeting, the Commission voted to conduct a study of the DWC judicial function. The purposes of the study are to identify possible statutory and administrative changes to make the

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system work more efficiently and to look at rules and practices in other jurisdictions that have addressed problems such as calendaring, case management and other issues of concern.

DWC Administrative Director Richard Gannon introduced Ernie Friesen, an expert on court management, who will be assisting the DWC in developing the parameters of the Judicial Function evaluation. Mr. Friesen was recommended to the DWC by the National Judicial College, where he served as dean.

Mr. Friesen gave a brief presentation of his background, which includes starting the Judicial College and the Institute for Court Management and serving as the director of the Administrative Office of US Courts. Mostly he has been a researcher about how cases go through courts, what makes them go more effectively and what the impediments of culture are that keep things from happening as they should happen. Mr. Friesen will be taking part in a community and stakeholders meeting on April 17 which will be helpful in developing a Request for Proposals (RFP) for the project.

Status Report on the Workers Compensation Information System (WCIS)

Richard Gannon, DWC Administrative Director

Jim Bellows, DWC Research Manager

AD Richard Gannon announced that the workers compensation information system has been implemented and introduced DWC Research Manager Jim Bellows to provide a brief description of the system. Mr. Bellows said that the data from the system will be used to produce standard reports, customer reports that are issued in response to various policy makers including the Commission, and data files for independent research such as Commission projects. Mr. Gannon said that the information system would be reviewed in-depth at the next DWC Information System Advisory Committee meeting on May 2, 2000.

Update on Labor Code Section 5814 Issue

Thomas J. McBirnie, Esq., Consultant

At its last meeting, the Commission voted to convene an Advisory Committee to review the public comments on the draft report on the Labor Code Section 5814 issue and submit recommendations.

Mr. McBirnie reported on the comments received from the community. The recommendation that received the broadest support was the referral of the most serious cases to the Audit Unit. Other recommendations such as those of: setting a statutory time, placing the limit on the amount of penalty were opposed by various members of the community. After some discussion, the Commission members considered the next step in the process.

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CHSWC Vote

Commissioner Steinberg moved to accept the findings of the draft report, but to defer to the Legislature and the workers' compensation community with respect to the recommendations. Commissioners Dulich and O'Hara seconded, and the motion passed unanimously.

Update on the Workers' Compensation Anti-Fraud Activities

Thomas J. McBirnie, Esq., Consultant

Mr. McBirnie gave a brief summary of the current anti-fraud program. The funding for the Workers Compensation Fraud Program was first provided by statute in 1991 and is derived from the annual assessment on employers. This assessment is currently \$30 million annually, divided among district attorneys and the Department of Insurance. Special Investigation Unit in workers' compensation insurance companies refer potential fraud cases to CDI or to the local district attorney. Such referrals have gradually declined during the 1990s. Data on fraud referrals, arrests and convictions are not specifically gathered, but the majority appears to come out of the Los Angeles basin area.

In order to deter employees and employers from committing workers compensation fraud, Insurance Code Section 1871.4 was enacted by the Legislature. Despite the fact that there are equivalent statutory provisions applicable to employers and insurers, there are no statutory notices or warnings for them better similar to those given to workers.

In order to broaden the campaign against all types of workers compensation fraud and to promote a more evenhanded approach to the problem, Mr. McBirnie suggested that legislation be recommended requiring notices or warnings to employers and insurers similar to those given to workers. Such notices or warnings could either be specifically targeted toward employers and insurers or could be combined with the existing notices and warnings and disseminated to all elements of the public.

CHSWC Vote

Commissioner O'Hara moved to approve the "Report on the Campaign Against Workers' Compensation Fraud". Commissioner Dulich and Commissioner Wilson seconded, and the motion passed unanimously.

Reports on CHSWC Study of Workers Compensation Pharmaceutical Costs

Frank Neuhauser, Survey Research Center, UC Berkeley

The draft report on the Cost of Pharmaceuticals in Workers Compensation was prepared in response to a request from the Commission on Health and Safety and Workers Compensation for a study of the potential savings from modifications to California's current approach to regulating pharmaceutical cost under workers' compensation. The report containing findings and

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recommendations was prepared for the Commission by a team of research scientists: Frank Neuhauser, Alex Swedlow of CWCI, Dr. Laura Gardner of Axiomatics and Ed Edelstein, a special consultant on pharmacy pricing. The project team was able to analyze data from many sources, including CWCI's ICIS system, bill review companies, and millions of pharmaceutical transactions.

Mr. Neuhauser stated that under the current California's Official Medical Fee Schedule (OMFS) pharmacies are allowed to charge the lower of their customary charge or the maximum under the OMFS. Almost all workers' compensation schedules appear to be high relative to other systems or negotiated rates. The OMFS maximums are significantly higher than limit imposed by other states' workers' compensation systems, either regulatory systems or privately negotiated contracts. Within workers compensation systems, California's pharmaceutical reimbursement rates are near the highest compared with the various states reviewed.

One of the most significant findings of the report was that if the fee schedule was reconstructed to achieve approximately the average of the reimbursement rates expected by pharmacists in four other systems reviewed, employers would pay approximately 70 percent of the current cost. This would translate into about \$64 million in savings on pharmaceuticals for the current year. Moreover, under the OFMS, employers are paying about \$12 million per year to encourage pharmacies to dispense generic drugs, a goal that possibly could be achieved by regulations alone.

Public Comments

Harry Ambrunn

Mr. Ambrunn, a pharmacist in Burlingame, wanted to comment on the Pharmaceutical Costs issue. Mr. Ambrunn was concerned that changing the fee schedule might result in lower quality of care for the injured worker than they presently receive. He said dispensing a workers' compensation prescription takes more time and paperwork than others. Mr. Ambrunn also urged that the enforcement of current regulations regarding prompt payments to pharmacies be strengthened and the penalties for late payments increased.

Carlyle Brakenseik

Mr. Brakensiek of the California Society of Industrial Medicine and Surgery (CSIMS) expressed concern regarding the use of data in the pharmaceutical report. He believes that pharmaceutical cost data may include data on medical management costs and the costs of industrial injuries not covered under the fee schedule. In his opinion, the pharmaceutical costs report is terribly flawed, contains misleading information, and that the Commission may draw the wrong conclusions from the report unless it is substantially revised. Mr. Neuhauser noted that he has already responded to these issues that have been raised previously by Mr. Brakenseik.

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David Leonard

Mr. Leonard, an attorney representing CSIMS, also contended that the report made no differentiation made between pharmaceutical treatment that is authorized and treatment that is not. He also contended CSIMS should have access to the data utilized by the University of California. Mr. Neuhauser suggested that Mr. Leonard make an official request to UC Berkeley.

Peter Kellison

Mr. Kellison, a representative of the California Pharmacy Association, made similar comments expressing concern on accessibility to pharmacies and comparability of California's workers' compensation pharmacy data with that of other programs.

CHSWC Vote

Commissioner Wilson moved to circulate the draft report to the community for public comments. Commissioner Dulich seconded, and the motion passed unanimously.

Update on CHWC Study of Vocational Rehabilitation

Frank Neuhauser, Survey Research Center, UC Berkeley

The research report was performed at the request of the Commission on Health and Safety and Workers' Compensation to analyze the cost of rehabilitation and outcomes for injured workers qualifying for the benefit before and after reforms of 1993. The reforms relating to the Vocational Rehabilitation were aimed at reducing the cost of Vocational Rehabilitation benefits while maintaining or improving the outcomes for the seriously injured workers. The major components of the reform included the following -- A \$16,000 cap was placed on the vocational rehabilitation benefit; a cap was placed on a total cost of services supplied by qualified rehabilitation professional; a qualified injured worker was not eligible to receive rehabilitation benefits if an employer made an offer of modified or alternate work that met certain conditions; and a worker was not eligible to receive more than one rehabilitation plan except under special circumstances.

Mr. Neuhauser said that while the cost of the rehabilitation benefits was reduced substantially, the outcomes for workers did not appear to change generally. The levels of both employment and earnings were comparable pre and post-reform. Outcomes for those qualifying for vocational rehabilitation are similar to permanent disability claimants not restricted from returning to their usual occupation. However, there were two hard-hit segments of injured workers for whom vocational rehabilitation has apparently failed to help significantly: older workers and workers with chronic pain.

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Report on Recommendations for Information to Injured Workers

Charles Lawrence Swezey, Esq., Consultant

Juliann Sum, Esq., Labor Occupational Health Program

At the December 1999 CHSWC meeting, the Commission voted to issue the draft report to the community and the public for written comments, then form an Advisory Committee to review the comments and recommend further action.

Mr. Swezey reported that the draft report was distributed to the advisory committee -- including representatives of the California Applicants' Attorney Association, California Workers' Compensation Institute, the Division of Workers' Compensation, and East Bay RSI Support Group -- and to the workers' compensation community. The draft report was amended incorporating advisory comments to the extent possible. The recommendations and the revised draft were sent to the Commission.

The draft "Working after Injury" pamphlet was included in the package of recommendation on information distributed to the Commission. The pamphlet details: how injured workers can continue working with their employers, information about vocational rehabilitation services and steps to take if the injured worker has questions or needs help.

CHSWC Vote

Commissioner O'Hara moved to approve the revised draft report on Recommendations for Information to Injured Workers and the draft pamphlet. Commissioner Wilson seconded and the motion passed unanimously. Chairman Rankin thanked the project team for all their work.

Public Comments

Vancois D'Amoun

Mr. D'Amoun, an injured worker, spoke about his situation and difficulty in dealing with the workers' compensation system. Chairperson Rankin pointed out that the Governor and the Legislature, not the Commission, have the power to make changes to the system. At the suggestion of Commissioner Steinberg, Mr. D'Amoun's testimony will be recorded and sent to the Governor's office.

Linda Berg

Ms. Berg, an injured worker, spoke about her present situation and difficulties in dealing with the workers' compensation system. It was suggested by Chairperson Rankin that Ms. Berg's testimony also be recorded and sent to the Governor's office.

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Armando Crespo

The testimony of Mr. Crespo, an injured worker, will also be recorded and sent to the Governor's office.

Chairperson Rankin emphasized that the Commission does not have the power to change legislation directly. He commented that it is more effective for injured workers to address their concerns to the Legislature directly if they would like to see changes made in the workers' compensation system.

Adjournment

Commissioner Dulich moved, Commissioner Wilson seconded, and the vote was unanimous that the meeting be adjourned. Chairperson Rankin adjourned the meeting at 2:50 pm.

Approved:

Respectfully submitted,

Tom Rankin 6-29-00

Tom Rankin, Chair

Date

Christine Baker

Christine Baker, Executive Officer